

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 02-13977

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| <p><b>FILED</b><br/><b>U.S. COURT OF APPEALS</b><br/><b>ELEVENTH CIRCUIT</b><br/><b>January 4, 2006</b><br/><b>THOMAS K. KAHN</b><br/><b>CLERK</b></p> |
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D.C. Docket No. 00-04815 CV-KMM

ERNESTO DIAZ,

Petitioner-Appellant,

versus

SECRETARY FOR THE FLORIDA  
DEPARTMENT OF CORRECTIONS

Respondent-Appellee.

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Appeal from the United States District Court  
for the Southern District of Florida

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**(January 4, 2006)**

Before DUBINA and KRAVITCH, Circuit Judges, and STROM\*, District Judge.

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\*Honorable Lyle E. Strom, United States District Judge for the District of Nebraska,  
sitting by designation.

PER CURIAM:

Appellant, Ernesto Diaz, appeals the district court's dismissal of his 28 U.S.C. § 2254 habeas petition. The district court found that Diaz was procedurally barred, under 28 U.S.C. § 2254(b), from seeking federal relief for his trial counsel's failure to challenge, for cause, allegedly biased members of the jury panel because Diaz failed to raise that claim on direct appeal. Diaz argues that this finding was erroneous because ineffective assistance of counsel claims under *Strickland v. Washington*, 466 U.S. 668 (1984), need not be raised on direct appeal. The State conceded, in supplemental briefing and during oral argument, that the claim could not have been raised on direct appeal and that the district court, therefore, erroneously applied the procedural bar to Diaz's claim. Nonetheless, the State asks us to evaluate the merits of Diaz's claim under *Strickland* and affirm the district court's order on this alternate ground. After reviewing the record and the parties' briefs, and having considered the oral arguments of the parties, we conclude this case should be reversed and remanded with directions to hold an evidentiary hearing on the issue of whether Diaz received ineffective assistance of counsel when his attorney failed to challenge, for cause, certain allegedly biased members of the jury panel.

**REVERSED AND REMANDED.**